

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE J. JARAMILLO

Plaintiff(s),

VS.

**ESPERANZA FINANCIAL
SERVICES, et.al**

Defendant.

Case Number: 07 CV 07006

**Honorable Blanche M.
Manning**

Magistrate Judge Susan E. Cox

Hearing Date: July 1, 2008

Hearing Time: 11:00 a.m.

NOTICE OF MOTION

To: **J. Steven Butkus, Gerard, Kalina & Butkus, 100 W Roosevelt Road, Wheaton, IL - 60187
 **Amy Ann Kalarickal, Potestivo & Associates, 134 N. LaSalle St., Suite 2050, Chicago, IL - 60602
 **MERS, c/o CT Corporation System, 201 S. LaSalle Street, Suite 814, Chicago, IL - 60602,
 **Patrick Thomas Stanton, Schwartz, Cooper Chtd., 180 North LaSalle St, Suite 2700, Chicago, IL - 60602
 **Arika Joy Osacky, Schwartz, Cooper, Greenberg & Krauss, 180 North LaSalle Street, Suite 2700, Chicago, IL 60601
 Esperanza Financial Services C/o Guerard, Kalina & Butkus, 100 W. Roosevelt Road, Wheaton, IL 60187.

PLEASE TAKE NOTICE that on Tuesday, July 1, 2008, at 11:00 a.m., we will appear before the Honorable Blanche M. Manning, Courtroom 2125, United States District Court, 219 S. Dearborn Street, Chicago, Illinois, and then and there present our **Motion for Default Judgment**, a copy of which is attached hereto and served upon you herewith.

Dated: June 19, 2008

/s/ David P. Leibowitz
Attorney for Plaintiff

Certificate of Service

On June 19, 2008, the undersigned, certifies that on this date, he caused a copy of the above document to be served upon each person shown on the

within Notice, by United States Mail, with postage prepaid, at Waukegan, Illinois. Those marked with an ** were served via electronic service.

/s/ Andrew J FishSchurder

Paralegal

David P. Leibowitz (Attorney ID 1612271)
Leibowitz Law Center
420 W. Clayton Street
Waukegan, Illinois 60085-4216
847.249.9100

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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JOSE J. JARAMILLO)	
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)	Case Number: 07 CV 07006
Plaintiff(s),)	
vs.)	Honorable Blanche M.
)	Manning
ESPERANZA FINANCIAL SERVICES, et.al)	
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**Jose Jaramillo's Motion for Default Judgment Against Esperanza Financial
Services**

Jose J. Jaramillo, Plaintiff, pursuant to Rule 55 of the Federal Rules of Civil Procedure, moves for entry of default judgment against Esperanza Financial Services ("Esperanza") on his Complaint to Rescind Mortgage Pursuant to Federal Truth in Lending Act, and in support, states:

1. On December 13, 2007, Jose J. Jaramillo, plaintiff, filed his Complaint to Rescind Mortgage Pursuant to Federal Truth in Lending Act.
2. Summons was duly issued and, together with a copy of the complaint, was served upon Esperanza. The executed affidavit of service was filed on June 19, 2008. A copy of the filed and executed Affidavit of Service is attached hereto as **Exhibit A**. An answer was due on or before January 28, 2008
3. Defendant had failed to file an answer on or before that date, nor had any responsive pleading been filed as of the date of this motion.

4. On April 28, 2008 Plaintiff filed its First Amended Complaint. A copy of this was served on Esperanza on May 6, 2008. A copy of the filed and executed Affidavit of Service is attached hereto as **Exhibit B**. An answer was due on or before May 27, 2008.

5. Defendant has failed to answer, move or otherwise plead to Plaintiff's complaint. Additionally, Defendant did not appear at any status hearing.

6. Defendant is in default for failure to answer, move or otherwise plead.

7. Attached hereto as **Exhibit C** is the affidavit of the Plaintiff in support of this motion for default judgment.

WHEREFORE, Jose J. Jaramillo, Plaintiff, prays that the Court enter a default judgment against Defendant, Esperanza Financial Services as follows:

- i. Declare that Plaintiff has validly rescinded the transaction as it applies to Esperanza.
- ii. Declare that any mortgage or security interest held by Esperanza is void and unenforceable due to violation of 15 U.S.C. §1635.
- iii. Declare that any mortgage or security interest held by Esperanza on property located at 1323 N. Cedar Lake Road, Lake Villa, IL – 60046 is void and unenforceable as it was procured by fraud.
- iv. Order that Esperanza provide Plaintiff with an accounting and refund of all payments made by Plaintiff to Esperanza, including but not limited to, any and all finance charges, earnest money, down payment, closing costs, points, credit insurance premiums, security interest charges, application fees,

- membership fees, commitment fees, appraisal fees, survey fees, title search fees, broker fees, credit report fees, filing fees, document preparation fees, attorney fees, and credit insurance premiums. These payments include payments made directly to Esperanza, paid by the Plaintiff directly to a third party or payments passed on from the creditor to a third party.
- v. Awarding Plaintiff with \$2,000.00 in statutory damages pursuant to TILA, 15 U.S.C. §1640 for failure to rescind on a timely basis.
 - vi. Awarding reasonable attorney's fees pursuant to the TILA, 15 U.S.C. §1640 in the amount of \$12,693.50 and costs in the amount of \$279.00. A copy of the itemization of billing for attorneys fees is attached hereto as **Exhibit D**.

/s/ David P. Leibowitz

Attorney for Plaintiff

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